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SHARIA BUSINESS AND THE CHALLENGE OF DISPUTE SETTLEMENT IN INDONESIAN RELIGIOUS COURT

Sharia economy is not new in the world of Islam. Development of sharia economic law in Indonesia begins with the emergence of islamic banking. The development of national and international economy that always moves quickly along with more wider challenges, should always be followed in responsively by national banking in carrying its functions and responsibilities out to the community. According to the sharia banking law in order to be categorized in the scope of islamic economics, it is determined by the fatwa of the Indonesian Ulama Council. This is due to the MUI as an institution that has the authority in the field of religion and related to the interest of Indonesian muslims. One thing that is interesting from the proliferation of business activities with Sharia principles is about its pattern of settlement of disputes is related with Religion Court jurisdiction. Religion Court is an institution that has authority to examine dispute settlement of sharia economy case in Indonesia. However, the law of civil procedure used in the Religious Court is still referring to procedureal law in the general court which is much criticized, because its complicated procedures and take a long time so it's been very expensive. Based on the analysis, the development of sharia economic system is basically the demands of the business world, which has the fast-moving character, however, development of sharia economy of which is not accompanied with its own substance of law, especially the procedural law that works to resolve disputes, so that, on its turn, it will lead to the obstacle for the sharia economic development itself, in which the condition is contrary to the principle of simple justice, quick and low cost as stipulated in the provisions of Article 2 (4) of Law No. 48 Year 2009 on Judicial.

Keywords: Sharia Economy; Civil Procedural Law; Religion Court.

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Хозяйственное право шариата и задачи мирного урегулирования споров в индонезийском Религиозном суде

В статье рассматриваются вопросы, связанные с расширением экономической деятельности с учетом принципов шариата, что дает возможность мирного урегулирования хозяйственных споров в рамках юрисдикции Религиозного суда Индонезии.

Ключевые слова: экономика шариата; гражданское процессуальное право; Религиозный суд.

A. Introduction. One of the pioneers of the sharia economic system in Indonesia can be seen from the development of sharia banking as part of the sharia economic system since 1998 until now[1]. The development of sharia economic institutions, such as sharia banking, sharia insurance, sharia lien, and others are quite rapid in the last few years in Indonesia[2]. As the consequence of the significant progress, it is very likely that there will be dispute between the parties involved in sharia economic activity[3]. Dispute arises due to various reasons and problems behind them, mainly because of conflict of interest between the parties.

2006 is also referred to as revolutionary year in the history of the existence of religious court in the Indonesian legal system[4]. Relating to the substance of the law, the Religious Court in the new order era only has the competence to resolve dispute in the field of family law (*al-aḥwal al-shaḥṣiyah*), such as about marriage matter, inheritance, testament, and grant, which is based on Islamic law and waqf and Sadaqah. Then, because of the demands of reformation, especially in the field of law and the justice, so amendment in the Law on Religious Courts through Law No. 3 2006 is done, of course, its intention is to accommodate the demands of the condition of society that grow rapidly[5].

The provision of Article 49 of Law No. 3 Year 2006 had given limitations for types of cases that became religion court absolute authority and when compared with the provision of Article 49 of Law No. 7 In 1989, in Arti-

[1] Liky Faisal, "Politik Ekonomi Islam Dalam Pembangunan Ekonomi Nasional Di Indonesia", *Jurnal Asas,* Vol 5 No. 2, 2013, Lampung: IAIN Raden Indtan, page. 1-2; Nevi Hasnita, "Politik Hukum Ekonomi Syari'ah Di Indonesia", *Legitimasi,* Vol.1 No. 2, January-June 2012, Banda Aceh: Fakulty of Sharia IAIN Ar-Raniry, Page. 260.

[2] Muhammad Syafi'i Antonio, "Membangun Ekonomi Islam di Indonesia", *Varia Peradilan,* Year XXI No. 245 April 2006, Jakarta: IKAHI, p. 25; Ali Mansyur, "Aspek Hukum Perbankan Syariah dan Implementasinya di Indonesia", *Jurnal Dinamika Hukum,* Vol. 11 Special Edition, 2011, Purwokerto: Faculty of Law Universitas Jenderal Soedirman, p. 69; Tim Lindsey, "Between Piety and Prudence: State Syariah and the Regulation of Islamic Banking in Indonesia", *Sydney Law Review,* Vol. 34 No. 107, 2012, Sydney: Sydney Law School-the University of Sydney, p. 111

[3] Khopiatuziadah, "Kajian Yuridis Penyelesaian Sengketa Perbankan Syariah", *Jurnal Legislasi*, Vol. 10 No. 3, September 2013, Jakarta: DJPP Kemenkum HAM, p. 279.

[4] Khisni, "Peradilan Agama Sebagai Peradilan Keluarga serta Perkembangan Studi Hukum Islam di Indonesia", *Jurnal Hukum*, Vol. XXV No. 1, April 2011, Semarang: Unisula, p. 492; Sumadi Matrais, "Kemandirian Peradilan Agama Dalam Perspektif Undang-undang Peradilan Agama", *Jurnal Hukum Ius Quia Iustum,* Vol. 15 No. 1, January 2008, Yogyakarta: UII, p. 112

[5] Eman Suparman, "Perkembangan Doktrin Penyelesaian Sengketa di Indonesia"; *Jurnal Penegakan Hukum*. Vol. 3 No. 2, July 2006, Bandung: Procedural Law Department Faculty of Law Universitas Padjadjaran, p. 21-35;

cle 49 of Law No. 3 of 2006 there were three (3) additional new authorities for the Religious Courts, that is: zakat, infaq and sharia economy. Devolution of authority to examine, decide and resolve sharia economic case to the Religious Court until today still leaves polemic, not only among academicians and legal practitioners, but also among field practitioners of sharia economy, especially in banking field and finance institutions. This is due to the regulation on sharia economy is not as detailed as the other authority of the religion court, such as marriage. The regulation of marriage or others are more detailed, so it eases the judges to examine the case that brought is its authority or not. Though Sharia economy is not easy and one of complex issues, and grows very rapidly, so that it can open up space and allows anyone to be involved in it. Consequently, there is no adequate legal protection in the practice of dispute settlement in the field of sharia economy this long.

Based on the provision of Article 54 of Law No. 7 1989 on Religious Courts, it stipulates that «applicable procedural law in the court in the environment of Religion Court is the applicable law of civil procedure in the courts in the General Courts, except it has specifically regulated in this Law». This shows that the applicable procedural law in the Religious Courts is the procedural law of the General Courts. Whereas public court procedures also negative-highlighted, considering the case filed requires a long time, high cost and convoluted procedures.[1] On the other hand, the development of sharia economic system is basically the demands of the business world, which has fast-moving character. Based on the explanation, the interesting legal issues in this case is the problematic of principle of simple justice, quick and inexpensive in the Religious Courts in examining sharia economic cases.

B. Discussion. The challenges of Simple, Fast and Light Cost Principle in Religion Courts.

In order to resolve the dispute required the device and dispute resolution institutions that has credibility and competence in the field of Islamic economic, either judicial or non judicial[2]. Justice here becomes the main objective.

As mentioned before, there are changes that are related to the addition of the Religious Courts's authority, however procedural law, as a rule dispute resolution in court, still refer to the law of civil procedure as used in a general court. This is governed by the provisions of Article 54 of Law Number 7 of 1989 Religion Courts, that «the law that applicable to the court in the field of Religion Court is the law of civil procedure that applicable in the courts in the Gen-

[1] Novita Riama, **"**Analisis Yuridis Terhadap Implementasi Asas Peradilan Sederhana, Cepat Dan Biaya Ringan Dalam Penyelesaian Perkara Perdata", *Jurnal Nestor Magister Hukum*, Vol. 2 No. 3, 2013, Pontianak: Universitas Tanjungpura, page. 14; Sayud Margono, 2000, *ADR dan Arbitrase, Proses Pelembagaan dan Aspek Hukum*, Jakarta: Ghalia Indonesia, p. 82.

[2] Ramlan Yusuf Rangkuti, "Sistem Penyelesaian Sengketa Ekonomi Islam: Instrumen Penting bagi Konsep Ekonomi Islam Mendatang", *Asy-Syir'ah-Jurnal Ilmu Syariah dan Hukum*, Vol. 45 No. 2, July-Desember 2011, Yogyakarta: UIN Sunan Kalijaga, p. 1432.

eral Courts, except as specifically regulated in this Law». The phrase «except as specifically regulated in this Law» shows that the Law of Religion Courts, besides using the law of civil procedure as applicable in a general court, also has its own set procedural law, such as: proof by reason syikak, or divorce which is based on the grounds of adultery[1].

Civil procedural law is not only a complement, but it also has an important position in implementing or enforcing civil law material. No substantive civil law enforcement may stand alone or loose it at all with formal civil law or civil procedural law[2]. The essence of civil procedural law according to the author's writed is: *First*, the rules that govern how people who their private interests is violated by others that can be completed; *Second*, the way how a person restored his rights if violated by another person; and *Third*, the way in how the authors or courts resolve civil disputes.

Good judiciary can be realized, if it has a base value as defined in the *International Framework for Court Excelent* (IFCE), namely equal treatment by the law (*equality before the law*), honesty (*fairnes*), impartiality (*impartiality*), freedom in making verdict, the ability (*competency*), the open integrity or transparancy, easy to visit (*easy access*), timely (*timeliness*) and certainty[3]. It is for justice can be run effectively and efficiently. In Civil Case itself, the procedures for law enforcement began reception lawsuit or appeal to the execution verdict. The basic value in Indonesia has been accommodated through the judicial simple principle, fast and low cost. The Religion Courts as holders of judicial power, in implementing processes and adjudicates cases also subject to the principles of justice simple, fast and low cost. The principle of «simple, fast and low cost is a principle is important principle like the other principles contained in Law Number 48 of 2009. The principle is simple, fast and low cost can be seen in the provisions of Article 2 (4) of Law Number 48 of 2009 regarding Judicial Power, which stipulates that Justice is done with a simple, fast, and low cost.

Simple meaning according to Article 2 (4) is the examination and the settlement is done by efficiently and effectively. The simple principle consist that the proceeding is easy to understand, clear and straightforward. Much fewer and simpler formalities are required, then the proceedings will run smoothly. Instead, too many firmalities, so, the proceedings not running smoothly, because it allows the emergence of various interpretations, it making less guarantees the legal certainty and cause fear to act before the court.

[1] Abdul Manan, 2008, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama*, Jakarta:Kencana, p. 7.

[2] I Gusti Ayu Dian Ningrum, dkk, "Penyelesaian Sengketa melalui Mediasi oleh Para Pihak di Pengadilan Negeri Denpasar dalam perkara Perdata", *Kertha Wicara,* Vol. 1 No. 1, 2012, Badung: Universitas Udayana, p. 3.

[3] Hatta Ali, 2012, *Peradilan Sederhana, Cepat dan Biaya Ringan Menuju Keadilan Restoratif*, Bandung: Alumni, p. 60. Pengadilan Tinggi Bandung, *Laporan Court Quality Forum*, Bandung:Pengadilan Tinggi Bandung, p. 2.

Keep in mind, that the development of the law is carried out through legal reforms with regard to the plurality of the prevailing legal order as well as the impact of globalization.[1] Then, the Supreme Court do the construction law in the resolution of civil cases in the courts, in particular the obligation to take the mediation process in court. Basically Article 130 *Het Her-zeine Indonesish Reglement* (HIR), 154 *Rechtsreglement buitengewesten* (Rbg) has provided the means to resolve the dispute between the parties through peace. Efforts settlement through peace is much more effective and efficient, partly because the settlement is done informally resolved by the parties themselves, completion period is short, low cost, are not bound by rules of evidence, the process of the settlement are confidential, the relationship of the parties are cooperative, results the target is the win-win and free of emotions and revenge. However, in practice, Article 130 HIR, 154 Rbg is only carried out merely fulfilling a formality [2], in which the judges at the beginning of the session always ask if the parties have reached an agreement / peace or not? and if not, then the trial resumed, and at the end of the trial judge then suggested that the parties take the peace efforts. Implementation of Article 130 HIR that seem formalistic, resulting in a civil case proceedings continue until the Supreme Court (MA), resulting in a buildup of cases at the Supreme Court. This is certainly contrary to the principle of justice simple, fast and low cost.

Based on the Article 130 HIR, 154 Rbg and to empower and streamline the institutions of peace, then MA modify it to a more forced (*compulsory*) is through the litigation mediation mechanism[3], with the intention that not all cases filed in the district court continued to appeal in MA which in turn will result the buildup of cases at the Supreme court. The enactment of Supreme Court Regulation (PERMA) Number 1 of 2016 on Mediation Procedure Court, resulted in mediation becomes an optimization that should be implemented as peace efforts in every case are admissible in court. Perma' goal is none other than to uphold the principle of simple justice quickly and at low cost, that while this is considered just a mere slogan. The mediation process is also required to be taken in the Religious Courts.

[1] Hibnu Nugroho, "Paradigma Penegakan Hukum Indonesia Dalam Era Global", *Jurnal Pro Justitia*, Vol. 26 No. 4, Oktober 2008, Bandung: Faculty of Law Universitas Parahyangan, p. 320-321; Riri Nazriyah, "Peranan Cita Hukum Dalam Pembentukan Hukum Nasional", *Jurnal Hukum Ius Quia Iustum*, Vol. 20 No. 9, June 2002, Yogyakarta: UII, p. 136; Fence M Wantu, "Mewujudkan Kepastian Hukum, Keadilan dan Kemanfaatan Dalam Putusan Hakim di Peradilan Perdata, *Jurnal Dinamika Hukum*, Vol. 12 No. 3, September 2012, Purwokerto: Faculty of Law Universitas Jenderal Soedirman, p. 479.

[2] Compare with Triana Sofiani, "Efektivitas Mediasi Perkara Perceraian Pasca PerMA Nomor 1 Tahun 2008 di Pengadilan Agama", *Jurnal Penelitian*, Vol. 7 No. 2, November 2010, Pekalongan: STAIN Pekalongan; Shinta Dewi Rismawati, dkk, "Hakim dan Mediasi: Pemaknaan Hakim Terhadap Mediasi Perkara Perdata di Pengadilan Negeri Pekalongan", *Jurnal Penelitian*, Vol. 9 No. 2, November 2012, Pekalongan: STAIN Pekalongan, p. 257-258.

[3] Compare with Dedi Afandi, "Mediasi: Alternatif Penyelesaian Sengketa Medis", *Majalah Kedokteran Indonesia*, Vol. 59 No. 5, May 2009, Jakarta: IDI, p. 190.

The process begins with the submission of accusation by plaintiff. Before it is examined, then based on the Supreme Court Rule (PerMa) No. 1 of 2016, meditation process should be carried out by parties who have a legal dispute. The obligation of mediation process before the examination of cases, it surely implies the implementation of a simple principle. Mediation is essentally a dispute settlement by adversrial known as the dispute settlement by third party who is not involved in the dispute[1], which then the Supreme Court will inroduce into the system of civil lawsuit trial[2].

The mediation process, as set forth in PerMa No. 1 of 2016 this nature is a compulsory, and if mediation process is not implemented in court, it will make judges seemed to have violated the law of legislation governing on Mediation in the courts. The proses of mediation itself lasts no longer than 30 working days and can be extended to 30 days, even if peace effort through this mediation process fails, the parties may submit the peace efforts during the investigation proses which resulted in the case investigation should be delayed up to 14 days.

Mediation principally consists of three stages, namely the pre mediation stage, mediation stage, and the final stage of mediation. An interesting on Supreme Court Rule (PerMa) No. 1 of 2016 is the mediator may state that one party or the parties and / or their legal councel does not have good intention: *First,* absence after being called two (2) times in mediation meetings without a valid reason; *Second,* attending the first mediation meeting, but absence at the next meeting athough having been called two (2) times in a row without valid reason; *Third*, absence repeatedly that distracts the mediation meeting schedule without a valid reason; *Fourth*, attending mediation meeting, but not filling and/or not responding to other parties' Case Resumes; and/or *Fifth,* not signing the Peace Agreement that has been agreed without a valid reason. The mediator statement implies to the plaintiff, which is accusation can not be accepted along with paying mediation and the court fee, whereas for the defedant, the mediator statement implies the obligation of the defedant to pay the costs of mediaton that shall be mentioned in the final verdict.

The existence of PerMa No. 1 of 2016 surly adds examination procedure at the court. Prior to the rules of mediation in the court, after a lawsuit field to the court, then on the day of the trial that has been determined, the examination

[1] Hikmahanto Juwana dalam Rahadi Wasi Bintoro, "Tuntutan Hak Dalam Persidangan Perkara Perdata", *Jurnal Dinamika Hukum*. Vol. 10 No. 2, Purwokerto: Faculty of Law Universitas Jenderal Soedirman, p. 148; Dewi Tuti Muryati dan B Rini Heryanti, "Pengaturan dan Mekanisme Penyelesaian Sengketa Nonlitigasi di Bidang Perdagangan", *Jurnal Dinamika Sosbud*, Vol. 3 No. 1, June 2011, Semarang: Universitas Semarang, page. 50.

[2] Komariah, "Analisis Yuridis PerMA No. 1 Tahun 2008 tentang Pelaksanaan Mediasi di Pengadilan sebagai Faktor yang mempengaruhi Efektivitas Proses Mediasi", *Legality: Jurnal Ilmiah Hukum,* Vol. 20 No. 2, 2012, Malang: Faculty of Law Universitas Muhammadiyah Malang; Faiz Mufidi dan Sri Pursetyowati, "Penyelesaian Sengketa Medik di Rumah Sakit", *Wacana Paramarta*, Vol. 8 No. 1, 2009 Bandung: Faculty of Law Universitas Langlangbuana, p. 37.

of the principal case was immediately carried out, starting from the plaintiff, the answer to the defedant (the disclaimer on the plaintiff), *replik* (refutation of plaintiff on defedants' answer) and *duplik* (refutation of replik plaintiff) then followed by verification of the parties, conclusions and ended with the judges' decision. With the existence of the PerMA, then before the examination of the subject of case, should the mediation efforts undertake in advance who is assisted by the mediator. Based on Article 1 paragraph 2 PerMA No. 1 of 2016 mediators are judges or other parties who have a certificate as a neutral party who assist the parties in the process of negotiations in order to find various possibilities of dispute resolution without having to disconnect or impose a settlement. The judge who have double role, can also act as a mediator in the mediation process besides as judicature, tend to be chosen by the parties, recalling the selection of mediators originating from the judges of the courts are not charged. Need to be defined here, that the role of the judge as judicature is very different from the role of the mediator that is only as a facilitator in the mediation process, because mediators have a role to facilitate mediation process and ignoring the element of disconnecting or imposing a decision on a dispute. Meanwhile, the element of disconnecting or imposing a decision on a dispute is typical character of the judge. According to the author, the failure of mediation process all this time[1] is because the parties tend to choose mediator from judges, while the judges have different characters with mediators in their role.

Quick linguistically means short time, within a short time, soon, little ins and outs (little knacks)[2]. The little amount of formalities in courts will accelerate the investigation. It will increase the court authority, and increase the public confidence towards court. Quick principle is not intended to tell judge to investigate and decide case without taking a long time in accordance with the procedural law itself.

Low cost referred in the explanation of paraghraph 2 article (4) is the court fees that are accessible for public. Cost linguistically means money that spent to hold (establish, perform, so on), fee (administration; fee spent on letter arrangement and so on), court fees such as calling the witnesses and stamp duty[3]. Low cost principle, means that all citizens can submit rights claim to the court. Court is not only for people who have lots of money, but as much as possible for those classified as a poor in fighting for their rights in court.

The application of civil law in the Religious Courts will be confronted with a complicated problem which is tentatively haunting the General Courts, especially in civil cases in district courts, ie the kink process, take a long time

[1] Rahadi Wasi Bintoro, "Implementasi Mediasi Litigasi di yurisdiksi Pengadilan Negeri Purwokerto", *Jurnal Dinamika Hukum*, Vol 14 No. 1, Purwokerto: Faculty of Law Universitas Jenderal Soedirman, p. 23

[2] Tim Penyusun Kamus Besar Bahasa Indonesia, 1990, *Kamus Besar Bahasa Indonesia*, Jakarta: Balai Pustaka, p. 792.

[3] *bid*., p. 113.

and high costs. Public court proceedings get a negative attention, considering the case sumitted requires a long time, high costs and kink procedures. Peace can be sonsidered as an appropriate solution over the existing disputes, as regulated in An-Nisa verse 128 («... and peace is better ...). Umar bin al-Khattab also states that «Return the case to the disputing parties until they make peace. If the verdict is set, it will cause resentment»[1]. However, in the end the mediation in court only implemented for formalistic only, which seem to extend the process of the case investigation.

According to Yahya Harahap, a judge for 39 years career of the district court level until the Supreme Court of the Republic of Indonesia illustrates how slow the case, starting from the first level until the appeal level in Indonesia, which takes about 5-12 years[2]. Similar disclosed by J. David Reitzel[3] «*there is a long wait for litigants to get trial*» it is hard to get permanent legal force, to begin the investigation, have to queue and wait. In the civil court, there is no clear regulation when the case can be resolved normatively, so those who have bad intentions will enjoy a right material that is not his belonging much longer, contrary to those who have good intentions will increasingly suffer losses because of a system that does not run as expected.

In order to uphold the simple principle of justice, fast and low cost, besides of issuing PerMA, the Supreme Court has also previously issued a Supreme Court Regulation No. 2 of 2015 about The Procedures of Simple Action Settlement. In this PerMA, only cases with a nominal value of more than Rp. 200.000.000 (two hundred million) which will be examined in court by using a regular event, while the cases with less than the nominal value are solved simply, which is by a single judge and with limited time. This is a good thing for not implementing the simple court principle, fast and low cost. However, according to Article 2 PerMa No. 2 of 2015 a simple accusation as set in PerMA only applies in a general court. Whereas disputes arising in sharia economic in Religious Courts tend to be a business dispute, where the settlement of disputes takes a short time and no need many formalities. One of the most prominent business characteristic or the economy in the globalization era is moving quickly[4], so the settlement of disputes in the business world through the courts is less preferred[5], because the settlement takes a long time, including in the business world that applies the sharia principles. However, in its own business disputes, the court is still

[1] Wahbah Az Zuhaili, 2007, *Fiqih Islam Wa Adillatuhu-Jihad, Pengadilan dan mekanisme mengambil keputusan*, *Pemerintahan dalam Islam,* Damaskus: Darul Fikr, p. 129

[2] M Yahya Harahap, 2007, *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*, Jakarta: Sinar Grafika, p. 233.

[3] J. David Reitzel, 1990, *Contemporary Business law, Principle and Case,* Forth Edition, New York City: MC. Graw Hill Pub. Comp, p. 46.

[4] Rahmat Rosyadi and Ngatino, 2002, *Arbitrase dalam Perspektif Islam dan Hukum Positif*, Bandung: Citra Aditya Bakti, p. 1.

[5] Gunawan Widjaja, 2008, *Seri Aspek Hukum Dalam Bisnis-Arbitrase VS Pengadilan-Persoalan Kompetensi (Absolut) yang Tidak Pernah Selesai*, Jakarta: Kencana, p. 9.

valued as a body that has the «special function» (serve a very special function)[1]. In a special position according JR. Spencer[2] verdict passed by the court likened to a «verdict of god» or «the judgment was that of god». The opinion that considers the court verdict as «the judgment was that of god», has been rooted in human life. In Greek philosophy, these opinions are already exists. Greek society calls a court verdict with «judicium die» (his decision, Judicium Die).

C. Conclusion. Applying the Law of Civil Procedure that is applicable in a general court in the Religious Courts is one of the lackness of Religious Courts to resolve the dispute in the sharia economic field. This is because, the character of the business settlement, including in the economic field sharia, demanding the settlement of disputes quickly, because the business world is always moving fast, while on the other hand, procedural law does not support the settlement quickly, because there is no limit when the case will be completed in the court, so for those who have bad intentions will enjoy a right material that is not his belonging much longer, contrary to those who have good intentions will increasingly suffer losses because of a system that does not run as expected.

According to the discussion that has been done, so the civil law procedure applied to solve sharia economic case in Islamic Religious Court does not support the character of the business world that demands quick settlement of disputes. Therefore, there should be a breakthrough of how the procedural law can accommodate the needs of the business world to be able to resolve the dispute in a simple way, fast and at a low cost.

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[1] M. Yahya Harahap, 1997, *Beberapa Tinjauan Mengenai Sistem Peradilan dan Penyelesaian Sengketa,* Bandung: PT. Citra Aditya Bakti, p. 237-238; Wayne McIntosh, "150 Years of Litigation and Dispute Settlement: A Court Tale", *Law and Society Review*, Vol. 15 No. 3/4 1980-1981, web http://www.jstor.org/discover/10.2307/3053513?sid=21105730658653&uid=3738224 &uid=4&uid=2 accessed on January 28th 2015.

[2] JF Spencer, 1989, *Jackson's Machinery of Justice,* Cambridge: Cambridge University Press, p. 19.

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Господарське право шаріату і завдання мирного врегулювання спорів в індонезійському Релігійному суді

Економіка шаріату не є новою в ісламському світі. Господарське право шаріату в Індонезії з'явилося з появою банківської системи. Швидкий розвиток внутрішньої і зовнішньої торгівлі зумовив збільшення і розширення завдань, що покладаються на національну банківську систему для виконання своїх зобов'язань і функцій перед суспільством. Згідно з принципами шаріату банківське право для того, щоб зайняти своє місце в національній економіці, має відповідати рішенням Індонезійської Богословської Ради. При цьому слід враховувати, що Ісламська релігійна Рада як інститут має повноваження в релігійній сфері і відбиває інтереси індонезійських мусульман. У статті розглядається ситуація, коли розширення економічної діяльності на основі принципів шаріату дає можливість мирного врегулювання спорів у рамках юрисдикції Релігійного суду.

Релігійний суд – інститут, який має повноваження розглядати питання щодо мирного врегулювання спорів у господарських справах. Однак цивільне процесуальне право, яке використовується ним, все ще відноситься до процесуального права в загальному суді, який часто піддається критиці через складну процедуру, що займає надто багато часу і, відповідно, є дуже витратною. Як свідчать результати досліджень, розвиток економічної системи шаріату відбувається відповідно до вимог сучасного виробництва, що швидко розвивається. Однак через те, що ісламська економіка не має власного господарського права, яке покликане розглядати спори, зокрема у сфері процесуальних правовідносин, її розвиток може бути значно ускладнений. Крім того, умови її розвитку суперечать самому принципу простого правосуддя, яке є швидким і дешевим, як це передбачено в положеннях до ст. 2 949 Закону № 48 2009.

Ключові слова: економіка шаріату; цивільне процесуальне право; Релігійний суд.

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